



June 5, 2002

Mr. Ronald D. Stutes  
Brown & Hofmeister  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2002-3057

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163896.

The City of Highland Village (the "city"), which you represent, received a request for several categories of information regarding two named peace officers, two other named individual citizens, and a specified address. In particular, the requestor seeks (1) the personnel file of one named peace officer; (2) all calls for service at a specified address; (3) all calls for service made regarding two named individuals; (4) all offense reports taken by the two officers for all assault cases; (5) all offense reports taken by these officers that specifically relate to these two named individuals as victim and suspect, respectively; (6) all offense reports taken by these officers that relate to the specified address; (7) any interoffice correspondence to or from these officers regarding the officers' involvement in an assault case involving one of these individuals. You state that "various police reports and records of calls of service" sought by the requestor have been made available. You contend, however, that portions of the requested personnel file and interoffice correspondence are excepted from public disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. Based on your representations and our review of the submitted information, we understand you to assert that all calls for service referenced in the request and all offense reports taken by one officer have been released to the requestor. If not, you must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). With respect to the remaining documents, we have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the

information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990). This office has also ruled, however, that the public has a legitimate interest in the background and qualifications of public servants. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of employee's resignation or termination). We agree that some of the former officer's personal financial information is not of legitimate public interest. We have marked the personal financial information that the city must withhold pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses information protected by other statutes. Some of the submitted documents are confidential under section 1701.454 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. The submitted documents include copies of the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") Form F-5, Report of Resignation or Separation of License Holder. It does not appear that any of the exceptions specified by section 1701.454(a) apply. Thus, the city must withhold the marked TCLEOSE form reports under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The submitted documents also contain information that is excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We have marked the information that must be withheld under section 552.117(2).

We note the submitted documents contain photographs of a peace officer. Section 552.119 of the Government Code provides that a photograph of a peace officer is excepted from public disclosure unless one of the following three conditions applies: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger the life or safety of the officer. Open Records Decision No. 502 (1988). It does not appear that any of the exceptions to section 552.119 apply. Furthermore, you have not informed us that the peace officer depicted in the marked photographs executed a written consent to disclosure of the pictures. Thus, the city must withhold the marked photographs under section 552.119.

Section 552.130 of the Government Code excepts from public disclosure information regarding Texas motor vehicle licenses and registration. We have marked the motor vehicle information the city must withhold under section 552.130.

We next address your claim under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." We note that where criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

You state that information relating to one named peace officer relates to a pending prosecution by the Denton County Criminal District Attorney's Office. You have submitted certain documents showing that this officer is on trial for the alleged murder of his wife. You assert that correspondence to or from this officer could be important to the prosecution of this offense. You state that the district attorney has requested that documents related to this case be withheld to avoid interference with the prosecution. Accordingly, we find that the release of the submitted memorandum would interfere with this prosecution. Thus, we conclude the city may withhold the memorandum in Exhibit C under section 552.108(a)(1).

In summary, we conclude that (1) the city must withhold personal financial information under section 552.101 of the Government Code; (2) the city must withhold the TCLEOSE records we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code; (3) the city must withhold a portion of the information under section 552.117(2) of the Government Code; (4) the city must withhold photographs of a peace officer under section 552.119; (5) motor vehicle information is confidential under section 552.130; (6) the city may withhold the memorandum submitted in Exhibit C under section 552.108 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 163896

Enc: Submitted documents

c: Ms. Rachel Horton  
Dallas Morning News  
131 West Main Street  
Lewisville, Texas 75067  
(w/o enclosures)